

A taxpayer can apply to the Department's Administrative Hearings Office for a "rehearing" on an assessment in the context of being granted an original review in the case of failure to protest the Notice of Tax Liability timely. See 86 Ill. Adm. Code 200.175. (This is a GIL.)

February 3, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated October 7, 1998. In your letter you question the correctness of the Illinois Department of Revenue taking certain collection action against you. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

After receipt of your letter we have reviewed Department records that affect your situation. We have discovered that PERSON1 and husband PERSON2 on October 30, 1990 registered for Retailers' Occupation Tax purposes as a husband and wife sole proprietorship for their business COMPANY. PEROSN1 and PERSON2 were both listed as owners of the business in response to Question 9. We further note that you, PERSON1, printed your name, address, phone and social security number in response to Question 12 (page 2, Section 2) about acceptance of personal responsibility for the filing of returns and the payment of taxes due. You also signed in response to Question 12 as well as signing the signature affidavit in Section 7.

We also understand that the business incurred sales tax liabilities and certain assessments were then caused to be issued. Because these assessments were not paid, the Department of Revenue filed liens against the business and owners of record, PERSON2and PERSON1.

On or after September 9, 1998 you submitted to the Department a Secretary of State corporation dissolution form as well as a portion of a divorce decree entered November 16, 1992, dissolving your marriage to PEROSN2. The corporation dissolution document states the corporation COMPANY was involuntarily dissolved by the Secretary of State on January 2, 1998 for failure to file an annual report and/or failure to pay franchise taxes. Although the form states the business was incorporated on August 16, 1991, no documentation was submitted to the Department about this prior to September 9, 1998. The Judgment For Dissolution of Marriage incorporated a marital settlement agreement stating that wife (PERSON1) shall resign from the business COMPANY and that the husband would assume all business debts and hold the wife harmless.

These items were submitted to the Department in September and October, 1998. Prior to that time there was no written documentation or proof submitted to the Department about the alleged status change of PEROSN1 in the business to serve as notice that you were no longer an owner and personally responsible for the filing of returns and payment of taxes due. It was thus proper for the Department to hold you responsible for the debts of this business when the liens and levy were issued.

You cannot rely upon your divorce degree for a refund of taxes paid to the Department in this matter because the Department's rights to proceed against parties responsible for an assessment liability are generally not altered by a divorce court's apportionment of debts that were incurred during the marriage. Although the decree holds PERSON1 harmless for business debts, the Department of Revenue was not a party to that proceeding and the divorce decree was not directed to the Department. Thus the Department's ability to proceed against either spouse through collection activities to collect tax liabilities was not affected. It would be different if a court of competent jurisdiction ordered the Department to cease collection activity, but that is not the situation here.

The court in the Judgment For Dissolution of Marriage placed upon the husband the duty of satisfying all COMPANY business debts and further required the husband to hold the wife harmless for them. If you as the wife believe you paid any tax amount to the Department that was the responsibility of your former husband, then it would appear you may have a remedy for relief against your former husband. However, this would be a private matter that you would have to pursue against your former husband and the Department of Revenue would not be a party to it.

If you wish to apply to the Department's Administrative Hearings Office for a "rehearing" on an assessment in the context of being granted an original review in the case of failure to protest timely, you could contact that office to ascertain if such review may be possible pursuant to the procedures set out in 86 Ill. Adm. Code 200.175, enclosed. In all candor, the chances of receiving such relief may not be good considering the length of time since assessment issuance.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Karl Betz
Associate Counsel

KB: